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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 11th November 2011

No. 10110—li/1 (B)-143/1995-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th June 2011 in Industrial Dispute Case No. 117/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of Social Forestry, Professorpada, Cuttack and its workmen Shri Kanhu Charan Bihari and 5 (five) others was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 117 OF 2008

(Previously registered as I. D. Case No. 39 of 1996
in the file of the P. O.), Labour Court, Bhubaneswar

The 29th June 2011

Present :

Shri Raghbir Dash, O. S. J. S. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Managements of— . . . First-party Managements

1. Social Forestry,
Professorpada, Cuttack.
2. D. F. O., Cuttack Forest Division, Cuttack.

And

1. Shri Kanhu Charan Bihari, S/o Batakrishna Bihari, . . . Second-party Workmen
Vill. Tainkana, P. O. Kalpara, Dist. Cuttack.
2. Shri Alekh Ch. Bhadra, Vill. Pahana,
P. O. Chikanpur, Via Garghar, Kendrapara.

3. Shri Dhaneswar Naik, Vill. Pokhariapada,
P. O. Chatna, Via Kujang, Dist. Jajpur.
4. Shri Kailash Ch. Bhoi, Vill. Bhalpada,
P. O. Bentakar, Dist. Cuttack.
5. Shri Bapi Parida, Vill. Bentakar, P. O. Bentakar
Dist. Cuttack.
6. Shri Ramesh Ch. Sethi, Vill. Sriramsahi,
P. O. Jhinkiria, Via. Bentakar, Dist. Cuttack.

Appearances :

Shri S. S. Kabi, Government Pleader	..	For the First-party Management
Shri T. Lenka, Authorised representative	..	For the Second-party Workmen

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') made by the Government of Odisha in the Labour & Employment Department vide their Order No. 101—li/1(B)-143/1995-L.E., dated the 2nd January 1996 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Government Order No. 4138—li/21-32/2007-L.E., dated the 4th April 2008. The Schedule of Reference runs as follows :

"Whether the action of the management of Social Forestry, Professorpada, Cuttack in terminating the services of Workmen Shri Kanhu Charan Bihari, Shri Alekh Ch. Bhadra, Dhaneswar Naik, Shri Kailash Ch. Bhoi, Shri Bapi Parida, Ramesh Chandra Sethi, unskilled workmen with effect from the 9th September 1994 is legal and/or justified ? If not, to what relief the above workmen are entitled ?"

2. According to the averments in the claim statement, the Social Forestry is a wing of the Forest Department under the Government of Orissa. The Deputy Director, Social Forestry, Cuttack (first-party No. 1) used to look after the Development of the Social Forestry and Nurseries in different places under its jurisdiction. The workmen whose termination is the subject matter of reference were engaged as daily-rated workers in the Central Nursery, Nuapada under the jurisdiction of the first-party. They were continued as such for several years without any break in their employment. They were discharging their duties satisfactorily. Suddenly, on the 9th September 1994 the first-party verbally terminated their services by refusing employment to them. Section 25-F of the Act was not followed. Even workmen junior to the second-party members were allowed to continue. Therefore, termination of their services with effect from the 9th September 1994 is neither legal nor justified.

3. In the written statement filed by the first-party No. 1 it is stated that the Social Forestry Project used to be funded by the Sweden International Development Agency (SIDA). The Social Forestry Division, Cuttack used to operate as a part of the Project. Its primary function is to create awareness amongst the people. For that purpose nursery work used to be undertaken to grow seedlings for distribution amongst the villagers. The Project work in different nurseries was carried out by the Division as and when physical and financial targets were communicated by the Regional Joint Director/Director, Social Forestry Project, Orissa. The execution of nursery work was a

time-bound operation and for that the daily wagers who presented themselves at the Nursery sites for work used to be engaged in the Nursery work. The labourers were engaged in the Nurseries on seasonal and temporary basis. Their number depended on requirement to meet the workload which used to vary from time to time. The workmen were not engaged continuously. The second-party workmen were some of such daily wagers who were engaged in Nuapada Nursery. They were engaged on their availability till the Nursery stock exhausted. The second-party workmen did not report for duties at Nuapada Nursery from September'1994. Their services were never terminated by the first-party No. 1.

4. During pendency of this proceeding and on the prayer of the second-party to implead the D. F. O., Cuttack Forest Division as a first-party on the ground that in the meantime Social Forestry Project Division had merged with or is kept under the control of the D. F. O., Cuttack Division, the first-party No. 2 has been impleaded as a party. On being noticed, the D. F. O., Cuttack Division has appeared and filed written Statement. The first-party No. 2 admits that the Social Forestry Project has been abolished and the establishment of the Social Forestry Project Division has already been merged with the Cuttack Forest Division with effect from the 1st October 2003. The other pleadings in the written statement of the first-party No. 2 are almost identical to that of the first-party No. 1. The additional contention is that when the Project was due to be liquidated there was no other way but to stop the engagement of labourer with effect from the 1st September 1994. It is further pleaded that after the liquidation of the project there has been no engagement of any daily wagers.

5. The following issue has been settled :—

ISSUE

(i) "Whether the action of the Management of Social Forestry, Professorpada, Cuttack in terminating the services of workmen Shri Kanhu Charan Bihari, Shri Alekh Ch. Bhadra, Shri Dhaneswar Naik, Shri Kailash Ch. Bhoi, Shri Bapi Parida, Shri Ramesh Ch. Sethi, unskilled workmen with effect from the 9th September 1994 is legal and/or justified ? If not, to what relief the above workmen are entitled ?"

6. On behalf of the second-party two witnesses have been examined. They are amongst the second-party members. On behalf of the first-party M. W. No. 1 is examined who is the Forest Range Officer of Cuttack Division working under the first-party No. 2. No document is exhibited from the side of the second-party but the first-party has exhibited documents marked Exts. A to D.

FINDINGS

7. *Issue No. (i)*—The defence taken by the first-party is two fold. First, it is contended that the workmen were engaged in a project and with the termination of the project work their services were no more required. Secondly, there was no continuity of employment of the second-party members who, with effect from September 1994, did not make themselves available to work in the Nursery.

8. The Management has tried to establish that the work in the Nurseries was being executed under a Project called "Social Forestry Project" which was being financed by SIDA. But, no attempt has been made to establish that the second-party workmen were put on notice that they were being engaged in a scheme or project which was to last only for a particular length of time or up to the happening of some events. In other words, it is not proved by the management that the workmen had the knowledge that their employment was for a limited period. In S. M. Nilajkar & others *Vrs.*

Telecom District Manager, Karnataka, reported in 2003 SCC (L & S) 380, Hon'ble Supreme Court have observed that the engagement of a workman as a daily wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or up to the occurrence of some events and therefore, the workman ought to know that his employment was short-lived. It is further observed that to exclude the termination of a scheme or project employee from the definition of retrenchment, it is for the employer to prove that the workman entered into the contract of employment consciously knowing from the date of the employment that his employment is short-lived. Otherwise, it is to be held that the termination amounts to retrenchment and Section 2(oo) (bb) of the Act will not be applicable to such retrenchment.

Since the management has not shown that the second-party workmen were intimated from the very beginning of their employment that their employment was for a limited period or till happening of some event, it cannot be allowed to take the defence that their case is covered under Section 2 (oo) (bb) of the Act.

9. That apart, there is no reliable materials for a conclusion that from September'94 work in Nuapada Nursery came to a closure and thereafter no daily wagers were ever engaged in the Nursery. On the other hand, Ext. A reflects that it was only in the year 2003 the Government of Odisha passed a Resolution to abolish 18 establishments then under the control of the Director, Social Forestry Project, including the establishment of the Deputy Director, Cuttack Social Forestry Division, Cuttack. Therefore, it is to be presumed that the establishment of the Deputy Director was in existence till August, 2003. It is admitted by M. W. No. 1 that some of the second-party workmen had worked in the Nursery till the mid of 1995. However, she explains that they were so continued as the work continued till 1995 when the surplus fund in hand was fully utilised. She has also stated that Nurseries financed under different schemes are still in existence and casual workers are still engaged in such Schemes.

10. This being the nature of evidence adduced by the first-party, there cannot be a conclusive finding that the project work got completed either in 1994 or even thereafter and the management did not engage any daily wagers in the Nurseries. Therefore, the plea that from the 1st September 1994 with the liquidation of the project there was no engagement of daily wagers is found to be unacceptable. It is also not believable that the second-party workmen had failed to report for duty at Nuapada Nursery with effect from the September, 1994 because, as revealed from the conciliation failure report, the workmen without much delay, raised this dispute before the local Labour Officer by way of a complaint, dated the 7th October 1994. The management is to establish that the workmen abandoned their job. But, in this case the management has not tried to discharge its onus. Hence, it cannot be said to be a case of voluntary abandonment of job.

11. Though it is claimed by the first-party that the workmen were not being engaged continuously to work in the Nursery and that they used to be engaged as and when they were available at the site of the Nursery, no specific plea has been taken to the effect that the second-party workmen or any of them had not completed one year of continuous service so as to attract the provisions of Section 25-F of the Act. On the prayer of the second-party order was passed on the 28th May 2009 directing the management to cause production of the Cash Books, Vouchers, Ledgers and Form No. 45. In compliance of order the management has produced the Cash Books on the 4th November 2010.

Learned Counsel for the second-party wanted to exhibited different entries of the Registers to show the period each of the workmen had worked under the first-party during the relevant period. Since the Registers were bulky, this Tribunal suggested the first-party to prepare an abstract showing the period of actual engagement of the workmen as per the entries made in the Cash Books which should be verified by the second-party with reference to the entries in the Cash Books. Both side accepted the proposal. Accordingly, the management prepared an abstract which has been marked as Ext. B containing three sheets. Learned Counsel for the second-party verified the correctness of the figures reflected in the abstract with the entries of the Cash Books but could not point out any discrepancy. Therefore, the abstract marked Ext. B is to be relied upon. On the basis of the abstract it can be said that the second-party members namely, Kailash Ch. Bhoi and Bapi Parida have not completed 240 days of work in any of the years during the entire period of their engagement. The second-party members namely, Ramesh Ch. Sethy and Kanhu Charan Bihari have completed 240 days of work in several calendar years during the entire period of their engagement. So far the second-party members namely, Dhaneswar Naik and Alekh Ch. Bhadra are concerned, the figures given in the abstract do not rule-out the possibility that they might have completed 240 days of work during a period of 12 months immediately preceding the termination of their employment.

The abstract further reflects that the plea taken by the second-party that the services of all the workmen were terminated with effect from the 9th September 1994 is not correct. From the abstract it is found that Kailash Ch. Bhoi and Bapi Parida had worked up to the 20th August 1995. Dhaneswar Naik, Alekh Ch. Bhadra and Kanhu Charan Bihari had worked up to the 31st August 1994 and Ramesh Ch. Sethi had worked up to the 30th June 1995. The abstract further reflects that Kailash Ch. Bhoi was engaged in between the 19th February 1992 and the 20th August 1995, Dhaneswar Naik between the 21st March 1992 and the 31st August 1994; Alekh Ch. Bhadra between the 1st April 1993 and the 31st August 1994; Bapi Parida between the 1st January 1994 and the 20th August 1995; Ramesh Ch. Sethi between the 21st September 1985 and the 30th June 1995 and Kanhu Charan Bihari was engaged in between the 1st February 1990 and the 31st August 1994.

12. It is already held that the plea of voluntary abandonment has not been established. In the facts and circumstances of the case, it is to be held that the termination of employment of the workmen is due to the refusal of employment. Consequently, on the basis of the data available from the abstract of the Cash Books (Ext. B) it is held that the refusal of employment in respect of Shri Ramesh Ch. Sethi and Shri Kanhu Charan Bihari without compliance of Section 25-F of the Act is illegal. The termination of services of Kailash Ch. Bhoi and Bapi Parida is not found to be in contravention of Section 25-F of the Act.

13. It is the case of the second-party that when the services of the workmen were terminated some junior workmen were still continued to work in the establishment of the first-party which violates the provisions of Section 25-G of the Act. But, it is not clearly mentioned in the claim statement as to who were the workmen junior to the second-party members but still continued to remain in employment. This is not admitted by the first-party. There is no evidence to substantiate this plea. In cross-examination M. W. No. 1 has stated that Nurseries are still in operation but being financed under different schemes. She has also stated that casual workers are still engaged in those Nurseries. This statement made by M. W. No. 1 relates to the Nurserise presently running under the establishment of the first-party. She has not stated anything about the situation that was

prevailing at the time the retrenchment of the workmen had taken place. Therefore, the second-party cannot take any advantage out of these statements made by M. W. No. 1. In the absence of sufficient materials it is not possible to give a finding that the retrenchment of Kailash Ch. Bhoi and Bapi Parida being in contravention of Section 25-G of the Act is either illegal or improper.

14. The possibility of Dhaneswar Naik and Alekh Ch. Bhadra having completed one year of continuous service before termination of their services cannot be ruled out. It is already observed that there is every possibility that they have completed 240 days of work during the period of 12 months immediately preceding the date when their employment came to an end. The management should have brought on record the complete data to rule out such possibility. Therefore, it is presumed that they have completed one year of continuous service and for that their retrenchment being in contravention of Section 25-F of the Act is illegal.

15. Now, the relief part may be taken into consideration. Admittedly, the workmen were daily wagers. They have claimed for their reinstatement with back wages and other service benefits. In their claim statement they have not pleaded that they are not in gainful employment but while adducing evidence W. W. No. 2 has stated that they are not in any gainful employment. In Jagbir Singh *Vrs.* Haryana State Agriculture Marketing Board, AIR 2009 (S. C.) 3004, the Hon'ble Supreme Court have observed that the Award of reinstatement with full back wages, particularly to a dailywager, is not proper and that compensation in lieu of reinstatement and back wages should be awarded. It is also observed that recently in a long line of cases Hon'ble Supreme Court have consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation, even though the termination of an employee is in contravention to the prescribed procedure. From the reported case, it is also found that while deciding as to what should be the appropriate relief, the Tribunal should take note of factors like nature of appointment, the period of appointment, the availability of the job, etc.

16. In the case at hand, the period of work rendered by Shri Ramesh Ch. Sethi spreads over a span of ten years and so far Kanhu Charan Behari is concerned, his period of work is about 5 years. The period of work rendered by Dhaneswar Naik is around 3 years and that of Shri Alekh Ch. Bhadra is 2 years. Nowhere it is forthcoming as to what was the age of the workmen when their services were terminated. In the claim statement also they have not given their respective age. They are manual workers. It is not believable that for such a long period they have been sitting idle without earning their livelihood by way of manual work. The project work financed by S.I.D.A. in which the workmen were employed is no more in operation. Considering all these facts and circumstances, this Tribunal arrives at a conclusion that instead of reinstatement and back wages, these four workmen should be paid compensation. The other two workmen namely, Kailash Ch. Bhoi and Bapi Parida are found not entitled to any relief. Considering the length of employment of the workmen and other factors stated above, this Tribunal awards compensation as follows :—

Name of the Workmen	Amount of Compensation
(1) Shri Alekh Ch. Bhadra	Rs. 25,000 (Rupees twenty-five thousand)
(2) Shri Dhaneswar Naik	Rs. 25,000 (Rupees twenty-five thousand)
(3) Shri Kanhu Charan Bihari	Rs. 50,000 (Rupees fifty thousand)
(4) Shri Ramesh Ch. Sethi	Rs. 1,00,000 (Rupees one lakh)

The first-party to pay the compensation awarded in favour of the above second-party workmen within a period of two months of the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
29-6-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH
29-6-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor

T. K. PANDA

Under-Secretary to Government